

49 FR 43502-02, 1984 WL 130137(F.R.)
NOTICES
ENVIRONMENTAL PROTECTION AGENCY
[FRL-2669-1]

California State Motor Vehicle Pollution Control Standards; Amendments
Within the Scope of Previous Waivers of Federal Preemption; Decision

Monday, October 29, 1984

***43502** AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The California Air Resources Board (CARB) has notified EPA that it has adopted regulations and procedures establishing emission-related defects reporting, in-use vehicle recall and in-use vehicle enforcement testing requirements. These regulations apply to all California 1978 and subsequent model year passenger cars, light-duty trucks, medium- and heavy-duty vehicles and motorcycles and were adopted by California to ensure that its emission standards are met by vehicles in actual use. These amendments are included within the scope of previously granted waivers of Federal preemption. Since these amendments are included within the scope of these waivers, a separate hearing to consider them is not necessary. However, if any party asserts an objection to these findings within 30 days of the date of the publication of this notice, EPA will consider holding a public hearing to provide an opportunity to present testimony and evidence to show that there are issues to be addressed through a [section 209\(b\)](#) waiver determination and that the Administrator should reconsider his findings. Otherwise, these findings will become final at the expiration of this 30-day period.

DATES: Any objection to the findings in this notice must be filed by November 28, 1984; otherwise, at the expiration of this 30-day period these findings will become final. If a public hearing is scheduled, it will be announced in a subsequent Federal Register notice.

ADDRESSES: Any objection to the findings of this notice should be filed with Mr. Charles N. Freed, Director, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

Copies of the emission-related defects reporting, in-use vehicle recall and in-use vehicle enforcement testing regulations and procedures at issue in this notice, a decision document containing an explanation of the Administrator's determination, and documents used in arriving at this determination, are available for public inspection during normal working hours (8:00 a.m. to 4:00 p.m.) at the Environmental Protection Agency, Central Docket Section, Gallery I, 401 M Street, SW., Washington, D.C. 20460 (Docket EN-84-02). Copies of the decision document can be obtained from EPA's Manufacturers Operations Division by contacting Mr. Steven M. Spiegel, as noted below.

FOR FURTHER INFORMATION CONTACT: Steven M. Spiegel, Attorney/Advisor, Manufacturers Operations Division (EN-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 475-8657.

SUPPLEMENTARY INFORMATION: I have determined that CARB's emission-related defects reporting, in-use vehicle recall and in-use vehicle enforcement testing regulations and procedures are included within the scope of waivers of Federal preemption previously granted pursuant to section 209(b) of the Clean Air Act, as amended (Act).[FN1] Specifically, these regulations and procedures include: (1) Emission-related defects reporting procedures which require a manufacturer to report whenever it determines that a specific emission-related defect exists in 25 or more vehicles or engines of the same model year; (2) in-use vehicle enforcement testing procedures which provide for testing a representative group of in-use vehicles

for compliance with the emission standards; and (3) in-use vehicle recall provisions which detail under what circumstances a manufacturer would be subject to a recall or penalties.

¹ E.g., 42 FR 31637 (June 22, 1977); 43 FR 999 (January 5, 1978); 43 FR 1829 (January 12, 1978); 43 FR 9344 (March 7, 1978); 43 FR 15490 (April 13, 1978); 44 FR 25729 (June 14, 1978); 45 FR 54126 (August 14, 1980); and [47 FR 1015 \(January 8, 1982\)](#).

CARB found these regulations were necessary because manufacturers had previously resisted requests to recall vehicles for in-use defects. CARB also found through surveillance testing that even after excluding tampered or improperly maintained vehicles, 22% of passenger cars under 50,000 miles exceeded the applicable emission standards due to defective or deteriorated emission components.

CARB has determined that these regulations do not undermine California's previous determinations that the State's standards are, in the aggregate, at least as protective of the public health and welfare as the Federal standards, since the new procedures merely ensure that the standards are complied with in actual use. I find these regulations to be within the scope of previously authorized waivers since: (1) The regulations do not undermine California's determination that its standards are, in the aggregate, as protective of public health as applicable Federal standards; and (2) do not cause California's requirements to be inconsistent with section 202(a) of the Act.

A full explanation of my determination is contained in a decision document, which may be obtained from EPA as noted above.

Note

My decision will affect not only persons in California but also the ***43503** manufacturers located outside the State who must comply with California's standards in order to produce motor vehicles for sale in California. Hence, under section 307(b)(1) of the Act, I hereby find that this action is of nationwide scope and effect. Accordingly, judicial review of this action is available only by filing a petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

Section 3(b) of [Executive Order 12291](#), requires EPA to determine initially whether a rule that it intends to propose or issue is a major rule and to prepare a Regulatory Impact Analysis for all major rules. EPA has determined that this action does not constitute a major rule. Accordingly, a Regulatory Impact Analysis is not being prepared for this waiver determination.

This action is not a "rule" as defined in the Regulatory Flexibility Act, [5 U.S.C. 601\(2\)](#), because EPA is not required to use "notice and comment" under the Administrative Procedure Act, or any other law, prior to a final decision. Therefore, EPA has not prepared a supporting Regulatory Flexibility Analysis addressing the impact of this action on small business entities.

This action is exempt from review by the Office of Management and Budget under [Executive Order 12291](#).

Dated: October 23, 1984.

William D. Ruckelshaus,

Administrator.

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